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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,389	10/23/2001	Charles K. Wike JR.	9423	1315

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EXAMINER

LE, UYEN CHAU N

ART UNIT PAPER NUMBER

2876

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/001,389

Applicant(s)

WIKE ET AL.

Examiner

Uyen-Chau N. Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 04 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7 is/are allowed.
- 6) ☒ Claim(s) 8-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Prelim. Amdt/Amendment

1. Receipt is acknowledged of the Amendment filed 10/04/2006.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 21-22 and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Andersen et al (US 6333692 B1).

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Re claim 21: Andersen et al discloses a method of operating a checkout (col. 9, lines 40-46) terminal comprising: scanning an item with a scanner 200; the POS 100 correlates the successfully scanned UPC code associated with the item with the list of UPC codes in the database to determine that the scanned item has an electronic article surveillance tag (figs. 2 and 4; col. 5, line 19 through col. 6, line 51); allowing, after the step of determining, deactivation of the electronic article (i.e., sending a signal to enable the deactivator 300) (col. 6, lines 5-8); and disabling (i.e., inhibit scan function) the scanner from scanning other items based upon the step of determining (col. 9, lines 24-34).

Re claim 22: activating an indicia (i.e., prompt the customer) identifying the location of an active electronic article surveillance tag deactivator; and wherein the step of allowing further comprises allowing deactivation of the electronic article surveillance tag with an active electronic article surveillance tag deactivator (col. 9, lines 40-46).

Re claim 25: wherein the disabling comprises disabling the scanner from scanning other items until the electronic article surveillance tag has been deactivated (col. 9, lines 24-46).

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Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 8-9, 13-16, 20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andersen et al in view of Plonsky et al (US 5341125 A). The teachings of Andersen et al have been discussed above.

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Re claims 8-9, 13-16, 20 and 23: Andersen et al discloses a self checkout (i.e., POS terminal 100) comprising: a processor 30; a scanner 200 in communication with the processor 30; an electronic article surveillance deactivator 300; and inherently a memory in communication with the processor 30 and storing program instructions which, when executed by the processor 30, causes the processor 30 to: (a) allow scanning of an item for purchase via the scanner 200, (b) determine (i.e., look up function of the UPC code to determine which UPC code/item has the security tag) after successful scanning of the item, whether the item has an active electronic article surveillance tag and (c) allow deactivation of the active electronic article surveillance tag after determining that the item includes an electronic article surveillance tag (i.e., via the deactivator 300) (figs. 2 and 4; col. 5, line 19 through col. 6, line 49 and col. 9, lines 40-46).

Andersen et al is silent with respect to an electronic article surveillance detector in communication with the processor for determining/detecting whether the item has an active electronic article surveillance tag, wherein the electronic article surveillance detector is associated with the scanner and comprises a coil and electronic circuitry/logic that is operative to obtain a signal from the coil indicative of the active electronic article surveillance tag, respectively.

Plonsky et al teaches a checkout counter 30A comprises a detector/deactivator 10 having transmitting coil 4 and receiving coil 5 for detecting the presence of an EAS tag 9, a deactivating coil 6 for deactivating the EAS tag 9, and microprocessor 20 for controlling the deactivating coil 6 to generate the deactivating field (figs. 2 & 3; col. 3, line 67 through col. 6, line 21).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the detector/deactivator of Plonsky et al into the system as taught by Andersen et al in order to provide Andersen et al with an advanced wherein the EAS tag is detected by detector/deactivator in lieu of performing a look-up PLU process, which would enhance the system accuracy and reduce time consumption.

7. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andersen et al in view of Bellis Jr. et al (US 6,598,791 B2). The teachings of Andersen et al have been discussed above.

Re claim 24: Andersen et al has been discussed above but fails to teach or fairly suggest that the system further comprising a second electronic article surveillance detector associated with a bagwell/security scale of the self-checkout and is operative to determine whether the electronic article

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surveillance tag has been deactivated by the electronic article surveillance deactivator.

Bellis Jr. et al teaches a bagging station 270 including an electronic article surveillance monitor 300 for detecting the presence of an active electronic article surveillance tag and a security scale 290 (fig. 1; col. 3, lines 37-51).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to further employ the electronic article surveillance detector associated with a bagwell/security scale as taught by Bellis Jr. et al into the system of Andersen et al in order to provide Andersen et al with the ability of assuring (i.e., check for an active EAS tag a second time) all paid items having EAS tags are completely deactivated before brought out of the store, which would eliminates fault detection (i.e., failure to deactivate a tag in an active state would set off an alarm when passing through a controlled exit). Furthermore, such modification would provide Andersen et al with a more secure system (i.e., to prevent unscanned/unpaid items being bagged).

8. Claims 10-12 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andersen et al as modified by Plonsky et al as applied to claims 8 and 15 above, and further in view of

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Bellis Jr. et al (US 6,598,791 B2). The teachings of Andersen et al as modified by Plonsky et al have been discussed above.

Re claims 10-12 and 17-19: Andersen et al/Plonsky et al has been discussed above but fails to teach or fairly suggest that the system further comprising a second electronic article surveillance detector associated with a bagwell/security scale of the self-checkout and is operative to determine whether the electronic article surveillance tag has been deactivated by the electronic article surveillance deactivator.

Bellis Jr. et al teaches a bagging station 270 including an electronic article surveillance monitor 300 for detecting the presence of an active electronic article surveillance tag and a security scale 290 (fig. 1; col. 3, lines 37-51).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to further employ the electronic article surveillance detector associated with a bagwell/security scale as taught by Bellis Jr. et al into the system of Andersen et al/Plonsky et al in order to provide Andersen et al/Plonsky et al with the ability of assuring (i.e., check for an active EAS tag a second time) all paid items having EAS tags are completely deactivated before brought out of the store, which would eliminates fault detection (i.e., failure to deactivate a tag in an active state would set off an alarm when

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passing through a controlled exit). Furthermore, such modification would provide Andersen et al/Plonsky et al with a more secure system (i.e., to prevent unscanned/unpaid items being bagged).

9. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andersen et al in view of Bergman et al (US 5,69,142 A). The teachings of Andersen et al have been discussed above.

Re claim 26: Andersen et al has been discussed above, but is silent with respect to indicating that an intervention is needed if the electronic article surveillance tag has not been deactivated with a predetermined time of allowing the deactivation.

Bergman et al teaches an inquiry is made (i.e., alert operator) as to whether a tag intended to be deactivated is not deactivated after a predefined period of time (e.g., 350 milliseconds) (fig. 3; col. 3, lines 22-32).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to further incorporate the step of alerting operator when the detected active EAS tag is not deactivated after a predefined period of time as taught by Bergman et al into the system of Andersen et al in order to ensure that all paid items having EAS tags are completely deactivated

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before brought out of the store, preventing fault detection when the customer passes through the controlled exit (i.e., failure to deactivate a tag in an active state would set off an alarm when passing through a controlled exit).

10. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andersen et al in view of Bellis Jr. et al and Bergman et al. The teachings of Andersen et al and Bellis Jr. et al have been discussed above.

Re claim 27: Andersen et al has been discussed above, but is silent with respect to detecting the electronic article surveillance tag with an electronic article surveillance tag detector located in a baggage area of the terminal.

Bellis Jr. et al teaches a bagging station 270 including an electronic article surveillance monitor 300 for detecting the presence of an active electronic article surveillance tag and a security scale 290 (fig. 1; col. 3, lines 37-51).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to further employ the electronic article surveillance detector associated with a bagwell/security scale as taught by Bellis Jr. et al into the system of Andersen et al in order to provide Andersen et al with the ability of assuring (i.e., check for an active EAS tag a second time) all paid items having EAS tags are completely

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deactivated before brought out of the store, which would eliminates fault detection (i.e., failure to deactivate a tag in an active state would set off an alarm when passing through a controlled exit). Furthermore, such modification would provide Andersen et al with a more secure system (i.e., to prevent unscanned/unpaid items being bagged).

Andersen et al as modified by Bellis Jr. et al has been discussed above, but is silent with respect to indicating that an intervention is needed if the electronic article surveillance tag has not been deactivated with a predetermined time of allowing the deactivation.

Bergman et al teaches an inquiry is made (i.e., alert operator) as to whether a tag intended to be deactivated is not deactivated after a predefined period of time (e.g., 350 milliseconds) (fig. 3; col. 3, lines 22-32).

It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to further incorporate the step of alerting operator when the detected active EAS tag is not deactivated after a predefined period of time as taught by Bergman et al into the system of Andersen et al/Bellis Jr. et al in order to ensure that all paid items having EAS tags are completely deactivated before brought out of the store, preventing fault detection when the customer passes through the controlled

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exit (i.e., failure to deactivate a tag in an active state would set off an alarm when passing through a controlled exit).

Allowable Subject Matter

11. Claims 1-7 are allowed.

12. The following is an examiner's statement of reasons for allowance:

The prior art of records to Andersen, Plonsky and all other cited references, taken alone or in combination, fails to teach or fairly suggest the specific structure or the method of operating a self-service checkout terminal comprising, among other things, the combination features of detecting after successfully scanning the item, an active electronic article surveillance tag associated with the item; allowing deactivation of the active electronic article surveillance tag by the consumer via an active electronic article surveillance tag deactivator after detecting that the item has an electronic article surveillance tag, wherein the allowing consumer scanning, detecting and allowing deactivation are performed during a single sales transaction as set forth in the claimed combinations.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee.

Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

13. Applicant's arguments, see pages 9-11, filed 10/04/2006, with respect to claim 1 have been fully considered and are persuasive. The rejection of claim 1 has been withdrawn.

14. Applicant's arguments with respect to claims 8-27 have been fully considered but they are not persuasive.

15. In response to the Applicant's argument with respect to "Andersen does not disclose disabling..." (pages 12-13), the Examiner respectfully requests the Applicant to further review Andersen wherein during the step of determining (i.e., lookup function performance) whether or not the UPC carrying a security tag, a scan inhibit function is enable to prevent items from being scanned via scanner 200 (col. 9, lines 24-46). Accordingly, the claimed limitation, given the broadest reasonable interpretation, Andersen meets the claimed invention (see the rejection above).

16. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found

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either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the primary reference to Andersen discloses a point of sale terminal performing a lookup function to determine whether or not a UPC code associated with an item carrying a security tag. Andersen is silent with respect to utilizing an electronic article surveillance detector to detect the presence of the security tag. The secondary reference to Plonsky teaches an electronic article surveillance (EAS) detector, which can be incorporated into a checkout apparatus for detecting and deactivating an active EAS tag. It would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to incorporate the EAS detector of Plonsky into the system as taught by Andersen in order to enhance the accuracy of Andersen preventing errors occurs during lookup function performance. Furthermore, such modification would reduce waiting time due to the fact that lookup function would take longer than detecting the tag utilizing the detector. Accordingly, the claimed limitation, given the broadest reasonable interpretation, Andersen in view of Plonsky meets the claimed invention (see the rejection above).

Conclusion

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Uyen-Chau N. Le whose telephone number is 571-272-2397. The examiner can normally be reached on maxi-flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on 571-272-2398. The fax phone number for the

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organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Uyen-Chau N. Le
Primary Examiner
Art Unit 2876

December 30, 2006